

APPRAISAL OF OMBUDSMAN IN NIGERIA; OPERATIONS, BENEFITS AND CHALLENGES.

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Abstract

This paper is to appraise the operations, benefits and challenges of ombudsman in Nigeria. The paper will examine the body as an in built mechanism arbiter independent and unbiased meant to effect checks and balances in daily official conducts and administrative activities when dealing with the public. The study made use of secondary sources of data in its methodology and content analysis for interpretation. The paper adopted the utilitarian and structural functionalism theories for its theoretical and empirical analysis. Finding shows that there is interference of government in the operations thereby influencing the expected unique role of ombudsman in serving moral equity, fair play, and social justice in our society. The paper recommends that there is need to recalibrate the legal powers of ombudsman to strengthen its functionality, efficiency, effectiveness and operational confidence in the public.

Keywords: Operational confidence, Functionality, Social justice, Interference of government.

1.1 Introduction

Ombudsman is a political device for the protection of the citizen from the arbitrary, repressive and oppressive application of the executive powers of government.

Historically, public compliant commission which is Nigerian version of ombudsman is a Scandinavian invention. However, in a state, ombudsman constitutes the ears of the people, the institution is the “ears” of the people because it serves as a mechanism of redressing the grievances of citizen in a democratic system. (Osakede, K.O & Ijimakinwa, S.O 2014).

As a result of the recommendation of the Udoji public service Review commission of 1974, the General Murtala Mohammed Administration established the public complaints commission in 1975 under Decree 31 of 1975. It was later amended by Decree 21 of 1979 and now incorporated into the laws of the Federal Republic of Nigeria as public complaints Act Cap 377. It is given a

constitutional status by its establishment by the 1979 constitution (section 274, (5) (6) and still by the present constitution of the Federal Republic of Nigeria. (Ogunna, 1999:469).

According to Ayo & Anthony (2011) ombudsman worldwide is empowered to initiate investigations on matters within its competence, in addition to cases brought to it by aggrieved citizens. The power to initiate investigations has proved very effective in curbing cases of repression and maladministration, as the experiences in the Scandinavian countries tend to suggest.

The commission which commenced work on 16th October 1975 is headed by chief commissioner and other state commissioners, directors and other supporting staff.

Equally, there are additional (5) five area offices in each state and Abuja offices nationwide. The constitution further provided the age and qualification for the chief commissioner and commissioners. It is important to stress that the ombudsman institution is veritable for any operational democratic society because it will enhance in protecting the fundamental rights of the citizens from arbitrary intimidation, harassment and justice.

Little wonder, Fajonyomi (2012) opined that the expansion and its accompanying possible clash with the interest and aspirations of the citizens led to the institutionalization of the means of citizens redress within many politics of the world.

Infact, the ombudsman have the role of improving public administration in general, by pointing out witnesses observed in the laws, procedures, practices, rules and regulations and standard behavior of officials. These are provided for in the Act Cap 37 LFN 2004.

In a nutshell, the focus of this work is to appraise ombudsman's operations, benefits and challenges in Nigeria.

1.2 Statement of Problem

The ombudsman is given by law access to all documents and records including secret ones. He is empowered to be present at all deliberations where judges and administration officers make the judgment and cases brought before them.

Any institution that receives and investigates complaints is only doing half its job if its casework experience is not used to provide comprehensive feedback to the organization investigated. Has ombudsman justified itself in this regard?

In other words, the ombudsman is to act as a legal safeguard against the excesses of overzealous government officials (federal, state and local). What extent has she carried this task? It is the responsibility of the commission to investigate complaints lodged before it or entered through its own initiative against government action or inaction which deprives the citizens their right and make them suffer injustice. Has the commission performed this task dutifully?

It is observed that sometimes this effort is thwarted by undue interference or influence by the government officials. Is this action in line with the legal framework establishing ombudsman? Could the non-challant attitude of most ministries, departments and agencies of government whose cases were brought before the commission not affect its performance? Also officials fail

to comply with the orders of the commission to give information and provide evidence. How then can justice be obtained?

Could there be no other approach to ensure the enforcement of the decision of the ombudsman? Indeed, could the improvement in the commission's publicity lead to efficiency and effectiveness of its service delivery? Certainly this situation implies that the provision of answers to the above questions and issues raised is the justification for this study.

1.3 Theoretical Discourse

A theory is set of reasoned ideas intended to explain facts or events (Udenta, 2009). As Easton once put, it is the theory that determines what we can observe. However, for the purpose of this paper, we consider two theories namely: Utilitarian theory and structural functionalism theory.

i. Utilitarian theory: This theory is derived from the work of John Stuart Mill and Jeremy Benthan.

According to John Stuart Mill and Jeremy Benthan, in normative ethics, a tradition stemming from the late 18th and 19th century English philosophers and economists posited that an action is right if it tends to promote happiness and wrong if it tends to produce the reverse of happiness of the performer of the action but also that of everyone affected by it.

In the notion of consequences, the utilitarian includes all of the good and bad produced by the act, whether arising after the act has been performed or during its performance.

However, Acts should be classified as morally right or wrong only if the consequences are of such significance that a person would wish to see the agent compelled, not merely persuaded and exhorted, to act in the preferred manner.

To this end, the ombudsman which is a Scandinavian invention constitutes the ears of the people, and it serves as a mechanism of redressing the grievances of citizen in a democratic system. Its activities are intandem with the utilitarian theory because it seeks to address what is morally right or wrong.

Applying Utilitarian theory here, is to assess the level of justice, morals and injustice carried out by its operators in the system.

Thus, ombudsman promotes peace and happiness when it delivers the right judgment and produces the reverse of happiness when it delivers the wrong judgment.

ii. Structural Functionalism Theory: Structural functionalism theory is a general theory concerning the explanation of social reality which posits that organization, units, and parts thereof and social forces in general should be approached, assessed, and/or examine from the point of view and functions –explicit as well as implicit. However, the originators of this theory are Verma and Talcot Pearson, who posited that when conflict does arise, it is settled by the judiciary system and does not therefore, lead to the disintegration of the social system.

Functionalism underscores the principle of organic relationship between the various structures/units existing in a system in terms of their functions. Hence any flaw in a part of

the system creates problems, imbalances and obviates appropriate outcome. It is note worthy that functionalism fosters a perspective on the vision of work, respect for jurisdictional boundaries as well as mutual cooperation and supervision (Udenta 2009:2-23).

Therefore structural functional analysis revolving around ombudsman will enable us to know what basic functions are fulfilled by ombudsman operations, and by what structures, and under what platforms it operates and its challenges. The core issue here is, however, how is the structure behaving as regards to the explicit and implicit functions. Why? How? And what is to be done.

2.1 Appraisal Criteria

In this regard, every genuine appraisal must begin from the criteria of the appraisal or evaluation or assessment, these includes for our limited purposes here and now:

- a) What actually is ombudsman? That is certain working definitions.
- b) Rationale for its establishment
- c) Structural operational analysis
- d) Achievements assessment
- e) The contending challenges
- f) Synthesis of the discourse

2.2 Understanding the Concept of Ombudsman

The public complaints commission derived its origin from the ombudsman. The ombudsman is a political device for the protection of the citizens from the arbitrary and oppressive exercise of the executive power of government. An ombudsman according to Nigro and Nigro (1973:22) a cited in Ogunna (1999) is an officer of parliament who investigates complaints from citizen's that they have been unfairly dealt with by government department, and who if he finds that the complaints is justified seeks a remedy (Ogunna 1999:467-468).

According to Negro and Negro (1973) the mode of operation of the ombudsman differs from country to country. For instance in Sweden, the ombudsman is empowered:

To supervise how judges, government officials and other civil servants observe the laws, acted illegally or neglected their duties.

Ilujomade and Eka cited in Ugbe (2004) the ombudsman is by no means, a super administrator empowered to over turn every error and to produce correct answers to all the difficult questions that confront modern government. He is more or less a supervisor who ensures the observance of the law and the avoidance of legalistic brigandage.

In addition, another reason for the institution is because it became apparent that the many devices to check excesses of the administration, i.e parliamentary, judicial and administrative controls would seem inadequate in many respects. This is so because some of the controls are insufficient and ineffective to remedy many wrongs. (Ugbe 2004:148).

However, as noted earlier, the public complaints commission is the Nigerian version of the ombudsman which is a Scandinavian invention. Consequent upon its recommendation by the

Udoji public service review commission of 1974, the General Murtala administration established the public complaints commission in 1975 under Decree 31 of 1975. It was later amended by Decree 21 of 1979 and now incorporated into the laws of the federal Republic of Nigeria as public complaints Act Cap 377. It is given a constitutional status by its establishment by the 1979 constitution (section 274, (5) (6) and still by the present constitution of the Federal Republic of Nigeria.

2.3 The Rationale for its Establishment

Commenting on the rationale for ombudsman, Ugbe (2004) posited that it affords the government the much needed regular and smooth running mechanism for feedback the reaction of its disgruntled customers after impartial assessment and corrective whatever may have gone wrong.

In other words, to check the excess of the administration that is the parliamentary, judicial and administrative control some times are inadequate in many aspects to remedy the wrongs but with ombudsman such injustice are investigated and dully resolved.

Ngu (1992:13) the ombudsman worldwide is empowered to initiate investigations on matters within its competence, in addition to cases brought to it by aggrieved citizens. The power to initiate investigations has proved very effective in curbing cases of repression and maladministration, as the experiences in the Scandinavian countries tend to suggest.

ombudsman affords a government the much needed “regular and smooth running mechanism for feeding back the reactions of its disgruntled customers, after impartial assessment and correcting whatever may have gone wrong (Ugbe 2004).

Fajonyomi (2012), ombudsman functions regardless of which country it may be:

- a) To protect the rights of the citizens
- b) To act as an indirect check on the misuse of powers by the administrators or any government official
- c) To investigate publicizes abuses of bureaucratic power and in some cases to initiate legal action much as a private citizen would.

This is certainly not a definitive list but it does point out the most important functions.

The functions as they apply to Nigeria are contained in decree 31 of 1975 that established the public complaints commission and the relevant portions of the 1999 Nigerian constitution.

Akpomuvire (2014) posited that the commission has been in the forefront to bring succor to the under-privileged and helpless complaints. The type of complaint handled by the commission according to the annual report (2004), brothers on wrongful dismissal or termination of appointment, non-payment of retirement benefits, seizure of farmlands, non-payment of pensions and gratuities, loss of parcels by NIPOST, complaints against NEPA (PHCN), NITEL e.t.c

Observably, another important reason for the ombudsman is the fact that the remedy is a cheaper alternative to many other avenues available for redressing grievances (Evans 1980).

2.4 Structural Operational analysis

According to Ugbe (2004) Nigeria is a Federal state, the public complaints commission is structured in line with the federal system of government in Nigeria.

Accordingly, it has its National Headquarters. It also has 5 area offices in each state of the federation. The area offices facilitate easy and quick submission of compliances. At all local government Headquarter, complaint boxes are kept for those who may not find it easy to travel to area offices or state offices to lay their complaints.

Structurally, it was also documented by Ogunna (1999:470) that the commission is set to investigate the complaints lodged before it or entered through its own initiative, against government actions or inactions which deprives the citizens their right and make them suffer from injustices. The commission is empowered to investigate into such actions taken by (public commission's publication).

- a) Any officer, department ministry of the federal government.
- b) Any officer, department or ministry of the state government
- c) Any officer, department authority of the local government
- d) Any company incorporated under or pursuant to companies and Allied Matters Act whether owned by any government or aforesaid or by private individuals in Nigeria or otherwise.
- e) Any statutory corporation or public institution set up by any government in the federation.
- f) Specifically, the cases which the commission is empowered to investigate are as follows:
 - i. Administrative acts which are or appear to violate any law or regulation of any government of the federation (federal, state or local) these cases include wrongful dismissal of officer's non-payment of salaries and allowances, and so on.
 - ii. Administrative actions which are mistaken in law or arbitrary in the ascertainment of fact, cases of this nature include hasty dismissal or termination in which the officers concerned are not given the opportunity to defend themselves resulting in non-compliance with the procedure or error in getting the necessary fact of their offence.
 - iii. Administration actions that are unreasonable, unfair, oppressive or inconsistent with the general functions of the administrative organ. Examples of this case are denial of official benefits, withholding of retirement benefits.
 - iv. Administrative actions that are improper in motivation or irrelevant in consideration. All cases of injustices arising from selfish, sectional, partisan nor religious consideration belong to this category.
 - v. Administrative actions which suffer from ambiguity and cannot be explained.
 - vi. Administrative inaction

Equally, in the performance of its structural functions, the commission is vested with the power to compel the attendance of any person so required to give evidence, supply information or produce documents. A default of the above, that is, failure of any person to comply with the order of the commission shall be guilty of contempt of court and would be tried for same in a court of law. (Ogunna, 1999).

The ombudsman institution is one of the most essential institution for any democratic society where constitutionalism exist the complex nature of government and its continued grip on the lives of the citizens inform the need for a watchman that will guarantee that government in

carrying out its day to day functions does not trample on the fundamental right of its citizens. (Ayo & Anthony, 2011).

According to Wikipedia (2007) the ombudsman is an official, usually (but not always) appointed by the government or by parliament who is charged with representing the interests of the public by individual citizens.

The work of the ombudsman in this respect is to mediate, persuade, cajole and otherwise seek to bring about a reasonable solution to an administration problem. (Akpomuvire 2014:6)

Rowat (1986) cited in Osakede & Ijimakinwa (2014) defines ombudsman as an independent and politically neutral officer of the legislature who receives and investigates complaints from the public against administrative action and who has the power to criticize and publicize but not the reverse such action.

Quoting copiously, Act, CAP 37 LFN (2004) the ombudsman aims at promoting social justice for the individual citizen. It is also to provide a viable option for Nigerians or anyone resident in Nigeria seeking redress against injustice arising from administrative bureaucratic errors, omission or abuse by officials of government, or limited liability companies in Nigeria.

However, Chijioke (2009) argue that ombudsman is a noble institution of the government which is vested with the responsibility to defend and uphold the rights of the citizens in the rights of how they have been treated by government officials, to investigate these complaints and, where it finds them justified, propose remedial action.

Little wonder, Adamolekun (1985) further stated that; it was the 1979 constitution section 274(5) that gave legal seal to the institution of the ombudsman that came about through the public complaint Act 1975.

In Nigeria, the ombudsman operates through the office of the public complaints commission (PCC). The annual report of the PCC (2004) made it clear that it was the Udoji public service Review commission that recommended for the establishment of the public complaint commission as an independent, impartial, extra-judicial statutory body to resolve administrative grievances.

It was also documented by Adamolekun (1985) that any citizen of Nigeria or any person resident in Nigeria is to be protected against any act of injustice. In this wise, the ombudsman is expected to investigate acts which are or appear to be;

- a) Contrary to any law or regulation
- b) Mistake in law, or arbitrary in the ascertainment of fact;
- c) Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs
- d) Improper in motivation or based on irrelevant consideration
- e) Unclear or inadequate explained; or
- f) Otherwise objectionable

Equally, any institution that receives and investigates complaints is only doing half its job if its casework experience is not used to provide comprehensive feedback to the organization

investigated. Such feedback could help improve the way internal complaints are dealt with. This may reduce the number of complaints that would get to the ombudsman. Feedback could also lead to improvements when investigations reveal systematic problems or failures. While the ombudsman is no doubt a noble institution, it must be stated that, it is by no means a super-administration, vested with the power to overturn every wrong action and to provide correct answer to all the difficult questions that confront modern government. (Daniel 2013).

2.5 Achievement Assessment

Documented and available words and statistics have shown some remarkable performance progress executed by the ombudsman institution.

According to Ogunna (1999) the public complaints commission is the bastion of justice, the defender and social watchdog of the oppressed and a powerful check against administrative power extremism. It is a ready and cheap means of securing justice as the services of the commission is offered free. The commission does not charge any fee for its service and as such it is readily available to the public complaints commission are free of charge and within the reach of the common man.

Its procedure is administrative in nature and result-oriented. It saves time and delays are avoided. Assessing the achievements of ombudsman, he observed that public complaints commission has made some achievements since its establishment in 1975. This view was backed up with the following statistics; in 1995, the commission received 10,013 cases throughout the federation, of which 3,644 cases were satisfactorily resolved. While, 6,369 were pending. In 1996, a total of 4,036 cases, nationwide, were satisfactorily resolved while 5,828 were pending. In 1997, 3,918 cases were satisfactorily settled, while a total of 5,649 were pending. For example in Imo state alone, in 1996, 203 cases was received out of which 199 were satisfactorily resolved while 126 were pending. (Public Complaints Commission Publication, n.d.) Similarly, the achievements of the commission was also recorded in the judicial appointments and conduct ombudsman annual report (2014-15).

Equally, it was reviewed that from April 2014-March 2015, the commission received a total of 952 complaints and enquiries, on appointment related cases, it reviewed only 1 complaint in September 2014, on conduct related cases, it received 640 complaints and finally, it received 311 enquires.

Furthermore, it was observed that 183 cases conduct relating to JCIO, 96 conduct-relating to tribunals 16 cases conduct relating to advisory committees were dealt with at 1st level initial check, totaling 295 while 107 cases conduct-relating to JCIO, 77 cases relating to tribunals and 4 cases relating to advisory committees were finalized at 2nd level "fast track" totaling 188.

Cases finalized following 1 3rd level "full investigation" are recorded as follows;

Appointment 2, cases, conducts relating to JCIO 46, conduct relating to Tribunals 35, conduct relating to advisory committees 9 totaling 92.

Additionally, it was reviewed that the commission did not uphold 2(100%) cases, upheld and partially upheld no case relating to appointment.

While conduct-relating to JCIO 32(70%) were not upheld, 14(30%) upheld and partially upheld totaling to 46.

In the same vain, cases relating to tribunal, 26(74%) were not upheld, 9(26%) upheld and partially upheld. While in conduct-relating to Advisory committee 7(78%) were not upheld, 2 (22%) upheld and partially upheld.

2.6 The Contending Challenges

- i. **Commissioner's Jurisdiction:** As documented by Ugbe (2003:157) it is also observed that the extension of a commissioner's jurisdiction to administrative procedure of a court in Nigeria is a rather dangerous innovation as difficulties may sometimes arise as to where to draw the line between purely "Administrative" and "Judicial" matters in the contest of the courts administration.

He further stated that what may be regarded as "Administrative" procedure of courts, for example the filing and serving of court processes and the execution of judicial judgment are all governed by status and rules of court made by virtue of the constitution.

- ii. **Exercise of Power:** Equally, another challenge is that an ombudsman may exercise his power over an issue or issues, the provisions of other law may declare the finality of the administrative Act on the issue.

In a related development, Ogunna (1999) posited that the law establishing the commission restricts it from entertaining and investigating any complaint on the following matters. (Public complaint commissioner's publication):

- a) Matters which are pending before the National council of states or the Executive council.
- b) Matters that are before the National Assembly.
- c) All matters that are before the House committee on public petitions.
- d) Cases that are pending in any court of law in Nigeria
- e) Matters that are relating to anything done or purported to have been done by any member of the Armed forces in Nigeria and the police force under the Nigeria Army Act of 1960, the Navy Act of 1964, the Air force Act of 1964 or the police Act as the case may be.
- f) Cases in which the complainant has not, in the opinion of the commission exhausted all available legal and administrative procedures.
- g) Cases relating to any act or thing done before the establishment of the commission in July, 1975.

- iii. **Non-Enforcement of its Decision:** It is observed that another serious obstacle which is on the way of the public service commission in the performance of its duty is non enforcement of its decisions. The commission spends its time, financial and material resources, energy, expertise and intellectual resources on a good complaint, the decision to which is dumped in the file without implementation. So in this consideration, the commission could be described as a toothless bulldog that can bark but not bite.

- iv. **Inadequate Publicity:** Indeed, the challenge of poor and inadequate publicity affects ombudsman's operations. The people for whom the public complaints commission was established are not fully aware of the free and quick services of the commission.

Hill (2008) argued that the major work of the ombudsman is to serve as an agent for redress against arbitrary governments or administrative actions. This could only be achieved if the public is fully aware of the activities of ombudsman.

Presently, the ombudsman is important in Nigerian public service. This is because the ombudsman plays a major role in curbing corruption, safeguarding human rights and assisting citizens to get redress in cases of maladministration by government officials.

3.1 Synthesis of the Discourse

The study using content analysis, critically analyzed the official documents, journals, articles, books, Newspapers for the purposes of this work. The theoretical framework of utilitarian and structural functionalism were dutifully examined.

Finding shows that while structural functionalism elucidates about rationale, objective, structure, operational modes and challenges of the institution. Utilitarian theory affirms that ombudsman could be another means of redressing the grievances of members of the society and this conforms to the conclusion of Hills (2000) that ombudsman is to serve as an agent for redress against arbitrary government or administrative actions.

Also, Ngu (1992:13) posits that the ombudsman worldwide is empowered to initiate investigations on matters brought by aggrieved citizens.

Thus, both Akpomuvire (2014), Emiola (2001), Osakede, K.O and Ijimakinwa, S.O (2001), Hill (2000) and Ugbe (2008) all acknowledged the importance of the institution of ombudsman as a veritable organ of addressing injustice and redress in administrative agencies so as to avoid the disintegration of the social system in Nigeria.

3.2 Conclusion

Ombudsman is a political device for the protection of the citizen from the arbitrary, repressive and oppressive application of the executive powers of government. It's aim at promoting social justice for the individual citizen.

In view of the above, it provides a viable option for Nigerians or anyone resident in Nigeria seeking redress against injustice arising from administrative bureaucratic errors, omission or abuse by officials of government, limited liability companies in Nigeria.

3.3 Recommendations

1. Recalibrating the laws establishing ombudsman to enable it carry out its functions effectively and efficiently.

2. There should be adequate publicity and public enlightenment programme of the functions, powers, and jurisdiction of the commission to enable the people know the existence of public complaint commission (ombudsman) and its scope of operations.
3. The commission should be adequately staffed with men and women of integrity who should be constantly trained and re-trained to enhance their professional focus and to deliver the lofty goals of the commission and as well maintain the global standard in its operations.
4. Equally, funding is an aspect that is very critical for the success of this institution; indeed, administrative efficiency could be fully realized when the agency in charge is not starved of fund for its operations.



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Appendix

TABLE 1
Breakdown of complaints received

| | Total number of complaints and enquires received | Appointment related cases received | Conduct related cases received | Other enquiries received |
|-----------|---|---|---------------------------------------|---------------------------------|
| April | 67 | 0 | 44 | 23 |
| May | 72 | 0 | 47 | 25 |
| June | 75 | 0 | 47 | 28 |
| July | 102 | 0 | 55 | 47 |
| August | 71 | 0 | 50 | 21 |
| September | 98 | 1 | 75 | 22 |
| October | 82 | 0 | 55 | 27 |
| November | 81 | 0 | 50 | 31 |
| December | 78 | 0 | 53 | 25 |
| January | 72 | 0 | 49 | 23 |
| February | 72 | 0 | 52 | 20 |
| March | 82 | 0 | 63 | 19 |
| | Number of complaints and enquires | Appointment related cases | Conduct related cases | Other enquiries received |
| Total | 952 | 1 | 640 | 311 |

Source: (Judicial Appointment & conduct ombudsman Annual Report 2014-15).

Table II
Breakdown of conduct complaints received by first tier organization.

| Total conduct related cases | Conduct cases relating to the JCIO | Conduct cases relating to Tribunals | Conduct cases relating to Advisory committees |
|------------------------------------|---|--|--|
| 640 | 512 | 102 | 26 |

Source: (Judicial Appointment & conduct ombudsman Annual Rport 2014-15).

Table III
Breakdown of cases finalized

| | Cases dealt with at 1 st level 'initial check' | Cases finalized at 2 nd level 'fast track' | Cases finalized following a 3 rd level 'full investigation' |
|---|---|---|--|
| Appointment | 0 | 0 | 2 |
| Conduct-relating to JCIO | 183 | 107 | 46 |
| Conduct-relating to Tribunals | 96 | 77 | 35 |
| Conduct-relating to Advisory committees | 16 | 4 | 9 |
| Total | 295 | 188 | 92 |

Source: (Judicial Appointment & conduct ombudsman Annual report 2014-15).

Table IV
Cases investigated, determined and finalized

| | Not upheld | Upheld and partially upheld | Total |
|---|------------|-----------------------------|-------|
| Appointment | 2(100%) | 0 | 2 |
| Conduct-relating to JCIO | 32(70%) | 14(30%) | 46 |
| Conduct-relating to tribunal | 26(74%) | 9(26%) | 35 |
| Conduct-relating to Advisory committees | 7(78%) | 2(22%) | 9 |

Source: (Judicial Appointment & conduct ombudsman Annual report 2014-15)